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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

10/039,920

Applicant(s)

CONDE, CLEMENTE

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-4,10-13,15-17,19**, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen (US 2,600,666) in view of Miller (US 899,605) and Jarl et al. (US 6195926).

For claim 1, Martensen discloses a fence that is capable of being a landscape border 26,20,21,23,22 comprising a first end 26 for insertion into the ground; a transition region (from ref. 22 to ref. 23 is consider the transition region) coupled to the first end; a second end 23 coupled to the transition region; and a connection feature 22 located proximate the second end, the connection feature formed to connect with another landscape border segment at varied locations between the transition region and the first end. However, Martensen is silent about the transition region comprises a curved loop structure, the transition region terminating in first and second axial directions, the first and second axial directions being different.

Miller teaches a wicket fence comprising a rod member 1 having first (the end that inserts into the ground) and second 3 ends, and a transition region (anywhere before ref. 3 to below ref. 2 but not to the first end) coupled to the first end, the transition region having a curved loop structure 2 for connecting another rod member 7 and to

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enhance the fence appearance. In addition, the transition region of Miller terminating in two axial directions that have different directions. For example, in fig. 4, the first end starts just right after the starting of the loop 2 and if one was to draw a line to create an axis there, the direction would be roughly Northwest. The second end is where the loop 2 ends and if one was to draw a line to create an axis there, the direction would be roughly pointing East. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a curved loop structure as taught by Miller in the rod-like member of Martensen in order to enhance the appearance of the landscape segment and to provide another connection area/point for another segment. Note, applicant fails to explain the criticality of having a curved loop structure at the transition area.

Jarl et al. teach a jardin gem comprising curved loop structure that exceeds 360 degrees in curvature, the gem is used in a variety of purpose such as to mark plants (col. 1, all lines). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the curved loop structure of Martensen as modified by Miller exceeding 360 degrees in curvature as taught by Jarl et al. in order to provide an aesthetically decorative border segment. Note, even with or without this 360+ degrees curvature, the direction of coupling of the first and second ends already exist in Martensen. For example, the first end (any point above ref. 20) and the transition region occurs in a vertical direction while the coupling of the second end (where ref. 22 is located) and the transition region occurs in a horizontal direction to flatten out into ref. 22.

For claim 2, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further discloses the connection feature is formed to connect to the other landscape segment anywhere between the transition region and the first end (figs. 1 & 6, where ref. 22 connects to another segment near ref. 21).

For claim 3, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further discloses the connection feature is formed to connect to the other landscape segment at varied angle (see fig 5, the connection feature 22 allow each segment to be connected at varied angle).

For claim 4, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further discloses the connection feature is formed to connect to the other segment at any angle (as shown in fig. 5) except for angles in which the landscape border segments would physically overlap (if the segments overlap, then the connection feature 22 cannot form angles between segments because the segments cannot be connected since they have to be a distance apart and not overlapping each other).

For claim 10, Martensen discloses a fence that is capable of being a landscape segment comprising a rod-like member 26,20,21,23,22 having first 26 and second 23 ends, the first end being for insertion into a landscape feature, the first end orientates in a first axial direction (vertical axis) and the second end orientated in a second axial direction (horizontal axis) and the first and second axial directions are different; a transition region (fig. 6, from ref. 21 to ref. 23 is consider the transition region) where the first axial direction transitions to the second axial direction; and a connector 22 located at the second end and configured to engage another rod-like segment of another

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similarly configured landscape segment. However, Martensen is silent about the transition region comprising a curved loop, the curved loop terminating in different axial directions.

Miller teaches a wicket fence comprising a rod member 1 having first (the end that inserts into the ground) and second 3 ends, and a transition region (anywhere before ref. 3 to below ref. 2 but not to the first end) coupled to the first end, the transition region having a curved loop structure 2 for connecting another rod member 7 and to enhance the fence appearance. In addition, the transition region of Miller terminating in two axial directions that have different directions. For example, in fig. 4, the first end starts just right after the starting of the loop 2 and if one was to draw a line to create an axis there, the direction would be roughly Northwest. The second end is where the loop 2 ends and if one was to draw a line to create an axis there, the direction would be roughly pointing East. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a curved loop structure as taught by Miller in the rod-like member of Martensen in order to enhance the appearance of the landscape segment and to provide another connection area/point for another segment. Note, applicant fails to explain the criticality of having a curved loop structure at the transition area.

Jarl et al. teach a jardin gem comprising curved loop structure that exceeds 360 degrees in curvature, the gem is used in a variety of purpose such as to mark plants (col. 1, all lines). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the curved loop structure of Martensen as

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modified by Miller exceeding 360 degrees in curvature as taught by Jarl et al. in order to provide an aesthetically decorative border segment. Note, even with or without this 360+ degrees curvature, the direction of coupling of the first and second ends already exist in Martensen. For example, the first end (any point above ref. 20) and the transition region occurs in a vertical direction while the coupling of the second end (where ref. 22 is located) and the transition region occurs in a horizontal direction to flatten out into ref. 22.

For claim 11, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further discloses at least a portion of the rod-like member has circular cross-section (see fig. 9 for the circular cross-section).

For claim 12, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) teaches in col. 1, lines 30-33, that the rod-like member can be square which is non-circular cross section.

For claim 13, as define in the above, the first axial direction is vertical and the second axial direction is horizontal, therefore, the two directions are 90 degrees offset from each other.

For claims 15 & 17, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further discloses a connection region (such as at ref. 22 shown in figs. 1, 2 or 3 at various location) is formed between the transition region and the first end, the connection region may engage a connector 22 of an adjacent landscape segment at a plurality of different locations within the connection region to enable various relative

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heights between the two landscape segments (figs. 1-3 show various height of segments).

For claim 16, Martensen as modified by Miller's and Jarl et al. (emphasis on Martensen) connector 22 may engage a rod-like member of an adjacent similarly configured landscape segment at a variety of angles, as shown in fig. 5.

For claim 19, in addition to the above, Miller teaches a wicket fence comprising a rod member 1 having first (the end that inserts into the ground) and second 3 ends, and a transition region (anywhere before ref. 3 to below ref. 2 but not to the first end) coupled to the first end, the transition region having a curved loop structure 2 for connecting another rod member 7 and to enhance the fence appearance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form at least one loop as taught by Miller at the transition region of the rod-like member of Martensen as modified by Miller and Jarl et al. in order to enhance the appearance of the landscape segment and to provide another connection area/point for another segment. Note, applicant fails to explain the criticality of having a curved loop structure at the transition area.

3. **Claims 5-6,9,20,21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen as modified by Miller and Jarl et al. as applied to claim 1 above, and further in view of McNeill (US 6,386,517 B1).

For claim 5, Martensen as modified by Miller and Jarl et al. (emphasis on Martensen) further teaches the segment being made out of wire but is silent about the wire being tubular metal wire. McNeil teaches a garden border fencing system in which



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he employs tubular metal material to make his landscaping segment 405 (col. 9, lines 14-18 & col. 10, lines 55-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a tubular metal material as taught by McNeill to make the wire of Martensen as modified by Miller and Jarl et al. in order to reduce material cost.

For claim 6, the tubular metal landscape segment of Martensen as modified by Miller, Jarl et al. and McNeill has a point at the first end (near ref. 26 of Martensen).

For claims 9 & 20, Martensen as modified by Miller and Jarl et al. is silent about a decorative feature coupled to the rod-like member. In addition to the above, McNeill further discloses the landscape segment comprising a decorative feature 401 coupled to a rod-like member 101 for ornamental purpose (col. 10, lines 27-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple a decorative feature as taught by McNeill on the rod-like member of Martensen as modified by Miller and Jarl et al. in order to enhance the appearance of the landscape segment.

For claim 21, McNeill further teaches the decorative feature 401 being coupled to a transition region (near ref. 109) of the rod-like member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple the decorative feature of McNeill in the area of the transition region of the rod-like member of Martensen as modified by Miller, Jarl et al. and McNeill to define a logical ending point on the landscape segment (col. 10, lines 30-35).

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4. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen as modified by Miller, Jarl et al. and McNeill as applied to claims 1,5 above, and further in view of Quinn (US 2,673,072). Martensen as modified by Miller, Jarl et al. and McNeill (emphasis on Martensen) further discloses that the connection feature is formed by flattening the rod member (col. 4, lines 1-5) and McNeill teaches the tubular metal material. However, Martensen as modified by Miller, Jarl et al. and McNeill is silent about the connection feature being a hook formed by bending and flattening the tubular metal material. Quinn teaches wire fence comprising a rod member 10 that is bent at an end 21 to create a hook 22 for connection purpose (col. 2, lines 51-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace a known type of connection (the lug portion 22 of Martensen) with another known type of connection (the bent hook of Quinn), especially when both types of connection produce the same result, i.e. to connect one element to another element. Martensen as modified by Miller, Jarl et al., McNeill and Quinn does not teach a hook formed by flattening the metal rod member. It would have been an obvious substitution of functional equivalent to substitute a non-flattened bent hook as taught by Martensen as modified by Miller, Jarl et al., McNeill and Quinn with a flattened bent hook as claimed by applicant, since it would perform the same function recited by the applicant; i.e. to connect one element to another element.

5. **Claim 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen as modified by Miller and Jarl et al. as applied to claim 10 above, and further in view of Quinn (US 2,673,072). Martensen as modified by Miller and Jarl et al.'s

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(emphasis on Martensen) connector is a eyelet or lug portion 22 but not a hook. Quinn teaches wire fence comprising a rod member 10 that is bent at an end 21 to create a hook 22 for connection purpose (col. 2, lines 51-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace a known type of connection (the lug portion 22 of Martensen as modified by Miller and Jarl et al.) with another known type of connection (the bent hook of Quinn), especially when both types of connection produce the same result, i.e. to connect one element to another element.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-7,9-17,19-21 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Son T. Nguyen  
Patent Examiner, GAU 3643  
May 5, 2003